DEPARTMENT OF FINANCIAL INSTITUTIONS
TEVEIA R. BARNES, Commissioner of Financial Institutions
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Opinion – "Credit Counseling Agency - Subject to Money Transmission Act"

February 22, 2011

Re: Opinion Request

Dear ___:

This responds to your letter dated January 18, 2011, in which you requested a determination as to whether the activities of a credit counseling agency (CCA) would be considered engaging in "money transmission" and therefore would require licensing under the recently enacted California Money Transmission Act.

FACTUAL BACKGROUND.

You describe the facts as follows. CCAs serve financially distressed consumers with the repayment of their debts to creditors through negotiated concessions (approved by the creditors) such as lowered interest rates and the elimination of late fees or penalties. (For ease of reference, we will refer to these as debt management plans or DMPs.) Through DMPs, the consumer pays a single monthly payment to the CCA which, in turn, disburses the appropriate payment as due to each creditor. In the course of serving these consumers, the CCAs are, in fact, receiving money from consumers, retaining it in trust account, and then transmitting it to creditors for the purpose of paying the customers' bills, invoices, or accounts.

CALIFORNIA MONEY TRANSMISSION ACT.

California Financial Code (FC) § 2030(a) [formerly § 1810(a)] states: "A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division . . . ."

FC § 2003(o) [formerly § 1803(o)], in relevant part, defines "money transmission" as "receiving money for transmission." FC § 2003(s), in relevant part, defines "receiving money for transmission" as "receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means."

FC § 2011 [formerly § 1806] provides for a public interest exemption to the licensing requirement of § 2030. Section 2011 states:

> The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this division any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this chapter.

APPLICATION OF MONEY TRANSMISSION ACT TO CCA ACTIVITIES.

A. Engaging in the Business of Money Transmission.

Based on your representation of the facts, through a DMP, a CCA receives debtors' funds and thereafter distributes, or transmits, those funds to the debtors' creditors in accordance with the terms of the repayment plan. Thus, CCAs receive money for transmission within or outside the United States. Pursuant to FC § 2030, CCAs would need to obtain a license unless exempt.

B. Exemption.

As you note, CCAs meet the definition of "prorater" as defined in FC § 12002.1 of the California Proraters Law. As such, CCAs are already licensed and regulated by the California Department of Corporations. It would therefore be duplicative to require licensing of CCAs under the Money Transmission Act. Moreover, such licensing would result in CCAs being subject to two regulatory schemes and would confuse jurisdiction. Finally, CCAs' business of money transmission is incidental to its credit counseling activities.

For these reasons, there are hereby exempted from the provisions of Chapter3, Division 1.2 of the FC, as being in the public interest and the regulation of which is not necessary, the offering and providing of DMPs to California consumers by CCAs.

Sincerely,

/s/ Jennifer L.W. Rumberger

JENNIFER L.W. RUMBERGER
Senior Counsel

JLWR:lca
cc: Robert Venchiarutti, Department of Financial Institutions, San Francisco